

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

DANIEL JAMES TREBAS,
Plaintiff,

v.

ROBERT KNAPP, et al.,
Defendants.

No. CV 08-4809-FMC (PLA)

**ORDER DISMISSING COMPLAINT
WITHOUT LEAVE TO AMEND**

On July 28, 2008, plaintiff filed a pro se civil rights action herein, after being granted leave to proceed in forma pauperis. Although plaintiff initially indicated that he intended to serve the Summons and Complaint on his own behalf, on August 14, 2008, plaintiff filed a motion seeking the assistance of the United States Marshal in serving the Complaint. Accordingly, the Magistrate Judge, pursuant to the mandate of the Prison Litigation Reform Act of 1995 ("PLRA"),¹ screened the Complaint prior to ordering service for the purpose of determining whether the action is frivolous or malicious; or fails to state a claim on which relief may be granted; or seeks monetary relief against a defendant who is immune from such relief. See 28 U.S.C. § 1915(e)(2).

¹ The provisions of 28 U.S.C. § 1915(e)(2) apply to any individual proceeding in forma pauperis.

1 On August 27, 2008, the Magistrate Judge issued an Order Dismissing Complaint with
2 Leave to Amend, in which plaintiff was given until September 25, 2008, to file a First Amended
3 Complaint that remedied the deficiencies discussed in the Order. Instead, on September 15,
4 2008, plaintiff filed a "Notice of Appeal and Motion for Certifying [sic] of Appellate [sic] Issues; Writ
5 of Mandamus and Supplemental Prayer for Relief" ("Notice of Appeal"), in which he purported to
6 appeal the Magistrate Judge's Order. The Court construed the Notice of Appeal as a motion for
7 the Court to certify the Magistrate Judge's Order Dismissing Complaint with Leave to Amend for
8 an interlocutory appeal pursuant to 28 U.S.C. § 1292(b), and denied the request in an Order filed
9 September 29, 2008.

10 At the same time that plaintiff filed his Notice of Appeal herein, he filed a similar request
11 with the Ninth Circuit Court of Appeals. On November 5, 2008, the Ninth Circuit dismissed that
12 appeal for lack of jurisdiction, finding that the order that plaintiff challenged was not final or
13 appealable.

14 On November 6, 2008, the Magistrate Judge issued a Minute Order informing plaintiff that
15 his Notice of Appeal had been denied by this Court as well as by the Ninth Circuit Court of
16 Appeals. The Magistrate Judge instructed plaintiff to file a First Amended Complaint by no later
17 than November 21, 2008, remedying the deficiencies discussed in the Order Dismissing Complaint
18 with Leave to Amend. Plaintiff was advised that, should he fail to file a First Amended Complaint
19 or fail to remedy the deficiencies in the original Complaint, the Magistrate Judge would
20 recommend that the action be dismissed.

21 On November 18, 2008, plaintiff filed a "Response and Notice Re: Court's Proceeding and
22 Order from Nov. 6, 2008" ("Plaintiff's Response"). Plaintiff informed the Court therein that he was
23 "unable to amend the original complaint into any form that would be acceptable by this court."
24 Plaintiff also stated that he "will not be filing an amended complaint pursuant to [the Magistrate
25 Judge's] Order of November 6, 2008," and appears ready to file a notice of appeal upon entry of
26 a "clearly official and unequivocally [sic] obvious final judgement [sic] from this court." (Plaintiff's
27 Response at 2-3).

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1 Accordingly, for the reasons set forth in the Magistrate Judge's Order Dismissing Complaint
2 with Leave to Amend, plaintiff's Complaint is dismissed without leave to amend, and judgment
3 shall be entered dismissing the action for failure to state a claim, but without prejudice to plaintiff
4 bringing the action as a habeas petition.

5
6 DATED: December 2, 2008



HONORABLE FLORENCE-MARIE COOPER
UNITED STATES DISTRICT JUDGE

7
8
9 Presented by:

10 /s/
11 PAUL L. ABRAMS
12 United States Magistrate Judge